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Workers' Rights, Violence and Impunity in Colombia

Abstract

[Excerpt] The National Labor School (ENS) reports that 38 trade unionists were murdered in Colombia between January 1 and December 1, 2007. While this does reflect a welcome decrease from the number of trade unionists murdered in 2006, the current rate of murders still places the country in a class of its own. Since 1991, 2,283 Colombian trade unionists have been murdered. In the majority of cases where a motive for the murder can be identified, the unionist was murdered because of his or her trade union activity. The ENS also registered 201 death threats against trade unionists in the first eleven months of 2007. These threats, though not as sensational, severely chill trade union activity, particularly because so many of these threats have materialized in the past. The combination of ongoing assassinations, death threats and violence against family members creates a climate of fear for trade unionists that makes it impossible for them to fully and confidently exercise their rights to organize, bargain collectively, go on strike or criticize the government.

Keywords

Colombia, workers' rights, violence, murder, trade unions, anti-unionism, AFL-CIO

Comments

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Workers' Rights, Violence and Impunity in Colombia



January 9, 2008

American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)

Preface

In October 2007, the Colombian government issued a report on labor rights titled *Colombia: A Progress Report—Strengthening the Rights, Benefits and Security of Unions*. Unfortunately, that report does not provide an objective and accurate analysis of labor rights and labor relations in Colombia. It fails to include serious criticisms by the International Labor Organization (ILO) and the Organization of American States (OAS) and ignores the findings of such highly credible human rights organizations as Human Rights Watch and Amnesty International.

This document attempts to complete the picture so policymakers have a better understanding of the reality workers face in Colombia.

EXECUTIVE SUMMARY

Crimes Against Trade Unionists

The National Labor School (ENS) reports that 38 trade unionists were murdered in Colombia between January 1 and December 1, 2007. While this does reflect a welcome decrease from the number of trade unionists murdered in 2006, the current rate of murders still places the country in a class of its own. Since 1991, 2,283 Colombian trade unionists have been murdered. In the majority of cases where a motive for the murder can be identified, the unionist was murdered because of his or her trade union activity. The ENS also registered 201 death threats against trade unionists in the first eleven months of 2007. These threats, though not as sensational, severely chill trade union activity, particularly because so many of these threats have materialized in the past. The combination of ongoing assassinations, death threats and violence against family members creates a climate of fear for trade unionists that makes it impossible for them to fully and confidently exercise their rights to organize, bargain collectively, go on strike or criticize the government.

Impunity

The government has established a special sub-unit within the human rights unit of the Office of the Attorney General to step up the investigation and prosecution of crimes against unionists. While we welcome this new investment of resources, it is not yet sufficient to address the enormous backlog of cases. Even with the recent prosecutions, the rate of impunity for the murder of trade unionists remains over 97 percent. Also, demobilized paramilitary members are eligible for greatly reduced sentences under the government's Justice and Peace Program. This means some may serve sentences as short as two and a half years, even if convicted of murder.

Labor Laws

The ILO has noted repeatedly that several of Colombia's labor laws are not in compliance with the ILO core labor standards, which are considered the minimum set of rights to be guaranteed by all countries. Further, the ILO's Committee on Freedom of Association has criticized the government for failing to enforce its own laws or international labor standards. Progress on labor law reform has been slow.

Social Dialogue

The government asserts it has long maintained social dialogue mechanisms with the unions. In some cases, however, mechanisms for dialogue were long dormant and began to function again only recently, when external criticism mounted. Colombian unions are rightly skeptical about the government's long-term commitment to social dialogue, when interest in such dialogue came largely from external pressure. These newly reactivated commissions have not yet achieved concrete results in the resolution of longstanding conflicts or much-needed improvement in labor law or labor relations.

CRIMES, IMPUNITY & PROTECTION

Murder and Other Crimes

According to the National Labor School (“Escuela Nacional Sindical,” or ENS), a frequently cited nongovernmental organization based in Colombia, 2,283 trade unionists have been murdered since 1991.¹ The majority of these men and women were killed because of their trade union activity - not as mere bystanders in an internal armed conflict. The ENS calculates that 433 of those murders occurred during the administration of President Alvaro Uribe.² Thirty-eight murders took place in the first eleven months of 2007.³ The number of trade unionists murdered has fortunately decreased from record levels; however, more trade unionists still are killed in Colombia every year than in any other country.

Some analysts of the situation in Colombia attribute the downward trend in murders to the changing tactics of illegal armed groups in the last few years, not entirely to intervention by the government. The paramilitaries (and their successor organizations), which are responsible for most crimes in which the perpetrator has been identified, have oriented their activities toward other strategies that have the same impact on the labor movement but do not draw the same level of attention from the media and the international community. For example, the ENS also registered 201 death threats against trade unionists in 2007, as well as 16 cases of armed assault, 14 cases of arbitrary detention, 11 disappearances and 95 cases of forced displacement.⁴ All these crimes severely chill trade union activity, while not showing up in the most-cited homicide statistic. In the end, if trade unionists fear for their lives, they will be unable to freely exercise their internationally recognized labor rights.

Regrettably, the government has publicly issued highly inconsistent figures regarding the *total number of trade unionists murdered in any given year, which calls into question its seriousness about ending violence and impunity in the country.* Indeed, a cursory review of news articles published in major U.S. newspapers revealed four different government figures for the total number of trade unionists murdered in 2006.

Houston Chronicle, June 24, 2007:	58 (citing the government) ⁵
Miami Herald, July 13, 2007:	25 (citing the government) ⁶
USA Today, Sept. 25, 2007:	65 (citing President Uribe) ⁷

¹ ENS, Informe Sobre Las Violaciones a Los Derechos Humanos de Los y Las Sindicalistas Colombianos En El Año 2006 (2007), p.16.

² ENS records reflect 184 murders in 2002, 94 in 2003, 96 in 2004, 70 in 2005 and 72 in 2006. See ENS, *supra*, p. 6.

³ See, ENS, Violaciones a los Derechos Humanos de los Sindicalistas Colombianos, Enero 1 a Diciembre 1, 2007, p. 4

⁴ Id. ENS also registered 3,400 death threats between 1991 and 2006. See, ENS, *supra* n.1 at p.16.

⁵ John Otis, *Workplace Intimidation*, Houston Chronicle, June 24, 2007, p. A21.

⁶ Steven Dudley, *Assassins still target unionists*, Miami Herald, July 16, 2007, p. A1.

⁷ David Lynch, *Colombian Leader Urges Trade Deal OK, Disputes U.S. Killing Claims*, USA Today, Sept. 25, 2007, p. 3B.

The New Republic, Dec. 17, 2007: 17 (citing President Uribe)⁸

The Ministry of Social Protection (MSP), the government agency responsible for labor policy in Colombia, published a report stating that 60 trade unionists were murdered in 2006. It appears that the government is either unable or unwilling to settle on the total number of trade unionists murdered in 2006. President Uribe's wildly inconsistent citations of such an important statistic undermine his attempts to portray his administration as deeply committed to addressing the root causes of the violence and the impunity.

Investigations

To investigate and prosecute crimes against unionists, the government budgeted roughly \$1 million in 2007⁹ to fund the sub-unit within the Office of the Attorney General assigned to address a list of priority cases.¹⁰ These funds are necessary for the unit to carry out its mission, but the allocation of funds has not yet translated into real results. According to government statistics, the Office of the Attorney General (including units other than the special sub-unit) secured convictions in 21 cases as of November 20, 2007. However, not all of the perpetrators in these cases were tried for or found guilty of murder. In the case of Orlando José Benítez Palencia, for example, prosecutors were unable to establish a motive for the homicide, and the accused were eventually sentenced for conspiracy. In another case, that of union leader and former senator Wilson Borja, the crime committed was not murder but rather attempted murder. Even with the recent and prior prosecutions, the rate of impunity for the murder of trade unionists since 1991 remains above 97 percent.¹¹

Further efforts to reduce impunity will no doubt be hindered by the lack of information on the vast majority of recent cases. According to ENS, the Office of the Attorney General only has information on 125 of the 433 murders committed during the Uribe Administration. In almost half of the cases on which information is available, 59, a potential perpetrator has not even been identified.¹² Additional efforts must be made to investigate these cases and to collect the evidence necessary to bring them to trial and sentencing.

⁸ Alvaro Vargas Llosa, *Heavy is the Head*, The New Republic, Dec. 19, available online at www.tnr.com/politics/story.html?id=ebb74809-8a68-4067-9692-18325e2e8e84.

⁹ This figure is from a PowerPoint presentation provided to us by the Office of the Attorney General, Unit on Human Rights and International Humanitarian Rights.

¹⁰ For the Attorney General's Office, the priority list includes 187 select cases and all 2006–2007 cases. This is derived from a larger list of 1,194 cases (which include murder, torture, kidnapping and forced displacements) that previously were brought to the attention of the ILO by the unions. However, the total universe of crimes is much higher.

¹¹ The government claims a total of 67 cases of crimes against trade unionists, including for crimes other than murder, that have resulted in a sentence.

¹² See, CUT, et. al., *LABOR RIGHTS AND FREEDOM OF ASSOCIATION IN COLOMBIA* (Oct. 2007), p. 39.

Trials

In July 2007, the government assigned three judges to adjudicate the more than 1,000 cases related to crimes against trade unionists that are to be investigated and prosecuted by the special sub-unit. In some cases, the judges have undertaken the dangerous work of sentencing some of the most notorious paramilitary members in Colombia.

When a demobilized paramilitary member is found guilty of a crime, the judge's sentence often cannot be enforced. Even though the judge may issue a maximum sentence of 40 years in prison, the paramilitary member may subsequently confess to the crime and serve a maximum of only five to eight years under the Justice and Peace Law. In reality, the sentence would likely be even lighter. Pursuant to a decree by President Uribe, the government is counting 18 months of the time it spent negotiating the demobilization law as time served (making the maximum sentence only three and a half to six and a half years). Demobilized paramilitaries also are eligible for reductions under ordinary detention rules for the time they spend studying and working. This allows their sentences to drop by as much as another third (leaving the maximum sentence in some cases only two and a half to four and a half years). Further, President Uribe has suggested that once the accused are sentenced, they will be moved to ranches to serve out the remainder of their terms.

Currently, only a handful of paramilitary leaders are serving time. Many of those are enjoying special privileges (access to the prison by their associates, laptops and cell phones, etc). Only about 2,800 of the roughly 31,000 demobilized paramilitaries are enrolled under the Justice and Peace Law. The government is seeking to pardon those not in the demobilization program, without a full investigation into whether they are responsible for any crimes.

Protection Program

The protection program for threatened Colombians has received considerable resources, from both the Colombian and the U.S. governments. However, the size of the budget is no guarantor of its success. Indeed, the operation and effectiveness of the program are limited by its inability to accurately assess risk in some cases, to provide suitable protection quickly enough to be effective and to adopt and change protection measures when that is necessary. In some cases, the unionist has been assigned a protection scheme but has waited for months for the protection to actually be provided. In most cases, the protection is "soft," meaning the provision of cell phones, walkie-talkies and domestic or, occasionally, international transportation.

The protection program also must be accompanied by serious criminal investigations, which certainly would increase the overall level of protection for trade unionists. Such investigations are not undertaken with regularity. Further, while there are roughly 1,600 trade unionists currently in the protection program, the government's labor-relations policies and practices tend to undermine the labor movement. Government officials continue to make unfounded accusations that trade unionists are guerrillas or guerrilla

sympathizers, undercutting unionists' legitimacy. Rather, the government should recognize union organizations and their activities as legitimate and publicly denounce threats and violence against trade unionists as major obstacles to democracy and rule of law in the country.

The program's linkage to the government's intelligence apparatus also is problematic. The case of Jorge Noguera, former head of the government's security department, DAS (Departamento Administrativo de Seguridad), demonstrates the need to wall off the program from the intelligence functions of the state. Noguera was arrested in 2007, accused of passing on information about trade unionists under the protection of his agency to the paramilitaries.¹³ Rafael Garcia, the former head of the DAS Information Technology and Communications Office, testified in 2006 that the DAS had provided a list of trade union leaders to commanders of the paramilitary organization, Northern Bloc of the United Self-Defense Forces of Colombia (AUC). Union members on that list were subsequently murdered, under the orders of paramilitary commander "Jorge 40."

Failed Demobilization

The government has taken some steps to combat paramilitarism. However, a flawed demobilization process has contributed to thousands of former paramilitaries creating new and dangerous criminal organizations. The recent reports of the OAS Mission to Support the Peace Process in Colombia (MAPP/OEA) have noted the resurgence of new paramilitary groups, some camouflaged as common criminal groups, as well as holdouts that have not demobilized. These new groups can be found throughout the country, including in Antioquia, Norte de Santander, Nariño and the Atlantic Coast.¹⁴ Although assuming distinct organizational frameworks, many of these groups continue the legacy of the paramilitaries, including narcotics trafficking and assassinations, and are embedding themselves into the political framework of the country. Indeed, such new groups as the "Aguilas Negras" (Black Eagles) are responsible for some of the death threats against trade unionists this year.

In December 2007, three workers at a Coca-Cola bottling plant in Bucaramanga were informed that they would be killed and buried in a mass grave by the end of the month if they did not cease their protests against their employer. The workers are members of SINALTRAINAL, the trade union representing food and beverage workers in Colombia. The Aguilas Negras assumed responsibility for this death threat, as well as five other against the same union this year. The Aguilas Negras have also issued several specific death threats this year against members and the leadership of Unión Sindical Obrera (USO), which represents workers in the oil industry, and numerous other trade unions in Colombia. A copy of a recent death threat from the Aguilas Negras is attached as Annex 1.

¹³ See, e.g., Simon Romero, "Bush Heads to Colombia as Scandal Taints Alliance," *The New York Times*, March 11, 2007.

¹⁴ International Crisis Group, *Colombia's New Armed Groups*, May 2007.

WORKERS' RIGHTS

The government's report asserts that "the rights of workers in Colombia are protected by law, enshrined in the country's constitution and in practice." However, numerous reports from respected international organizations, including the International Labor Organization (ILO) and the International Trade Union Confederation (ITUC), reveal a very different reality. For years, the ILO has identified several ways in which the labor laws of Colombia fail to meet the ILO core labor standards, which are considered a *minimum* set of rights to be guaranteed by all countries regardless of level of development. In practice, the record is even worse.

I. Laws

A. Freedom of Association¹⁵

Denial or Delay of Union Registration: Under Article 364 of the Labor Code, a new union is to have legal status upon its formation. Thereafter, a union need only file a specified set of documents with the Ministry of Social Protection (MSP) to complete its registration, normally a *pro forma* process. However, according to Colombian unions, the MSP invokes reasons not found within the labor law to deny registration and thus arbitrarily delay or deny the recognition of a union. The U.S. State Department found the registration of new unions often takes years.¹⁶ As a union cannot legally undertake any function until it is registered, the government can effectively prevent or indefinitely delay workers from representing their interests through a union organization.

According to a report prepared by the three national union centers, the Central Unitaria de Trabajadores (CUT), Confederación de Trabajadores de Colombia (CTC) and the Confederación General de Trabajo (CGT), the MSP also has revoked the registration of unions, which is not permitted under the law. Further, the ILO has been clear that "cancellation of a trade union's registration should only be possible through judicial channels."¹⁷ To date, the registration of the following unions has been revoked by the administration, not by judicial process: Sintraindu, Antrapro, Atliven, Sintrapananco, Sintranalchoc y Sintralacteos.¹⁸

Use of Temporary Contracts, Cooperatives and Temporary Service Companies: Laws that allow and encourage the hiring of workers on temporary contracts or indirectly through cooperatives and subcontractors are increasingly common in the Andean region.

¹⁵ See ILO, CEACR: Individual Observation Concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize, Colombia, 2006.

¹⁶ U.S. State Department, Country Reports on Human Rights Practices—Colombia, March 8, 2006, available online at www.state.gov/g/drl/rls/hrrpt/2005/61721.htm.

¹⁷ ILO Committee on Freedom of Association, Digest of Decisions (2007) (hereinafter "Digest of Decisions") ¶ 687.

¹⁸ CUT, CGT, CTC, CPC, Los Derechos Laborales y las Libertades Sindicales en Colombia, November 2007, p. 56 at n 64.

The effect (and purpose) of these laws has been to negate the workers' right of free association and collective bargaining.

Temporary Contracts: In Colombia, the legal framework for the use of temporary contracts is found in Article 3 of Law 50 of 1990, now Article 46 of the Labor Code. Under Law 50, employers may hire workers on a temporary basis (up to three years) and may continue to renew such contracts indefinitely—often for many years. While such workers technically have the right to join unions, when they do, their employers exclude them from the workplace by not renewing their contracts when they expire. As a result, workers on temporary contracts are extremely fearful and resistant to exercise their right to join a union, since they believe (justifiably so) that it will result in dismissal.

Associated Labor Cooperatives: In theory, a worker cooperative is a voluntary association, is democratically self-managed and equitably distributes the gains realized by its economic activities to its members. For hundreds of thousands of people working for an associated labor cooperative in Colombia, however, the opposite is true. In some cases, for example, an employer has required its workers to join an associated labor cooperative in order to keep their jobs. In so doing, the employer severs the employment relationship and contracts with the cooperative to provide it with the very same workers. Even though a cooperative is supposed to be self-managed by the workers, some cooperatives are under the effective control of the employer. In still other cases, employers have contracted with management-friendly cooperatives that are being operated, in practice, as a subcontracting agency.

Most importantly, those who work for an associated labor cooperative are, under the law, treated as owners, not as employees. Thus, these workers are explicitly excluded from the application of the labor law.¹⁹ This has led to extreme forms of exploitation, particularly in the rural sector. The exclusion of these workers from the national labor law, in law and in practice, violates ILO Convention 87. The ILO recently explained:

Mindful of the particular characteristics of cooperatives, the Committee considers that associated labor cooperatives (whose members are their own bosses) cannot be considered, in law or in fact, as “workers’ organizations” within the meaning of Convention No. 87, that is organizations that have as their objective to promote and defend workers’ interests. That being so, referring to Article 2 of Convention No. 87 and recalling that the concept of worker means not only salaried worker, but also independent or autonomous worker, the Committee has considered that workers associated in cooperatives should have the right to establish and join organizations of their own choosing.²⁰

Further, the ILO has enjoined its member states to refrain from using cooperatives to evade otherwise applicable rights enshrined in the labor code. Article 8(1)(b) of ILO

¹⁹ See Law 79 of 1988, Art. 59 and Decree 4588 of 2006, Art. 10.

²⁰ Digest of Decisions ¶ 262.

Recommendation 193 (2002) states that “National policies should ... ensure that cooperatives are not set up for, or used for, non-compliance with labor law or used to establish disguised employment relationships, and combat pseudo cooperatives violating workers’ rights, by ensuring that labor legislation is applied in all enterprises.”

Recently, several public enterprises—many with active unions—have been privatized, including Caja Agraria, Telecom, Bancafe, Inravisión and Banestado, among others. As these companies are privatized, the successor company does not recognize the union or the existing collective bargaining agreement. Rather, workers are dismissed and rehired through temporary service agencies, cooperatives or on short-term contracts.²¹

In 2005, there were 2,980 associated labor cooperatives operating in the public and private sectors, with 378,933 associates.²² The number of cooperatives climbed to 3,296 in 2006, with 451,869 associates, according to Enrique Valderrama, superintendent for Solidarity Economics.²³ In his opinion, the official number is too low due to the under-registration of the cooperatives.

B. Collective Bargaining²⁴

Direct Bargaining with Nonunion Employees: Article 481 of the Labor Code, as modified by Article 70 of Law 50 of 1990,²⁵ permits collective agreements (“pactos colectivos”) to be directly negotiated with non-unionized workers where the union represents less than one-third of the workforce. In reality, they usually are contracts that workers are unable to negotiate and are forced to accept under threat of dismissal. The agreements are used in some cases to undermine union representation and collective bargaining by establishing terms and conditions with workers often selected and favored by management on the condition that they prevent a union presence from growing at the workplace. In some cases, the employer will use the promise of an agreement to entice workers to resign from the union, leaving membership below the one-third threshold, making such agreements legal.

A Bar to Industry-wide Bargaining: The labor code does not explicitly provide for industry-wide collective bargaining, only bargaining at the company level. Although the

²¹ Los Derechos Laborales, *supra* fn. 4, p. 57.

²² Fernando Urrea Giraldo, *La Rapida Exapansion de las CTA en Colombia* (ENS, 2007).

²³ El Tiempo, *Explosion de Cooperativas de Trabajo Asociado (CTA) se produjo en Colombia el año pasado*, Sept. 30, 2007. He also explained that, “There are employers that promote the creation of Associated Work Cooperatives and require their workers to affiliate to it.” As they are not obligated to register their associates under social security, pension and insurance programs, they can provide services at much lower rates.

²⁴ See ILO, CEACR: Individual Observation Concerning the Right to Organize and Collective Bargaining, Convention 98, Colombia, 2006.

²⁵ Article 481 as amended: “The pacts between employers and non-union workers are governed by the dispositions established in Titles II and III, Chapter I, Part Second of the Substantive Labor Code, but are only applicable to those who have subsequently signed on to them. When the union or unions represent more than a third of the workers of a company, the company will not be able to form collective pacts or to extend those that are already in effect.”

level of bargaining is a matter left to the discretion of the parties, the legislation should not constitute an obstacle to collective bargaining at the industry level.²⁶

Limits on Public-Sector Bargaining: Article 416 of the Labor Code states that public-sector workers do not have the right to bargain collectively; instead, public-sector workers are allowed only to submit “respectful petitions.”²⁷ Convention 98, as well as Convention 151, explicitly provides that public employees who are not engaged in activities involving the administration of the state should enjoy the right to collective bargaining.²⁸

Ban on Collective Negotiation over Pension Benefits: In 2005, Colombia reformed its Constitution to eliminate collective bargaining on the subject of pensions. The law also provides that the pension provisions of existing collective bargaining agreements will become null on July 31, 2010. The ILO has stated that “Matters which might be subject to collective bargaining include the type of agreement to be offered to employees or the type of industrial instrument to be negotiated in the future, as well as wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of the collective agreement, the granting of trade union facilities, including access to the workplace beyond what is provided for in legislation etc.; these matters should not be excluded from the scope of collective bargaining by law...”²⁹

Blacklisting: The blacklisting of union leaders by employers is widespread in Colombia. The ILO High Level Mission also confirmed the use of blacklisting by the government. As the mission report found, “There were some cases of trade unionists being blacklisted in some public enterprises in the framework of secret plans to eliminate those trade unionists supposed to be members of the guerrilla. These operations were often carried out by isolated members of intelligence services, or other similar state agents.”³⁰ The ILO has stated categorically that, “All practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices.”³¹

²⁶ Digest of Decisions ¶¶ 988-90.

²⁷ Article 416: “Unions of public employees cannot present bargaining demands nor celebrate collective conventions, but the unions of other official workers have all the attributions of other unions, and their bargaining demands will be transacted in same way as the others, even though they cannot declare or engage in a strike.” The Constitutional Court of Colombia found this law to be unconstitutional. However, a new law has yet to be enacted. See Sentence C-1234 of 2005.

²⁸ Id. See also, ILO Mission Report (October 2005) ¶ 144.

²⁹ Digest of Decisions ¶ 913.

³⁰ ILO Mission Report, ¶ 77.

³¹ Digest of Decisions, ¶ 803.

C. The Right to Strike

The ability of unions to undertake a strike, an internationally recognized instrument for defending or promoting collective rights and interests, is heavily restricted. The ILO has held that the Labor Code runs afoul of international norms in the following ways:³²

1. The prohibition on the calling of strikes by federations and confederations.³³ The ILO has found that “The prohibition on the calling of strikes by federations and confederations is not compatible with Convention No. 87.”³⁴
2. The prohibition on strikes, not only in essential services in the strict sense of the term, but in a wide range of services that are not essential.³⁵ However, the ILO has found that strikes may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).³⁶ The ILO has found that the following services on Colombia’s list are not essential: civil servants not exercising authority of the state, transportation, mining (salt) and oil. Some, but not all, work in telecommunications, hospitals and sanitation may be properly classified as essential. Electricity and water supply services generally are considered essential.
3. The possibility of dismissing trade union officers who have intervened or participated in an unlawful strike, even where the unlawfulness of the strike rests on requirements which are contrary to the principles of freedom of association.³⁷ The Committee on Freedom of Association once again urged Colombia to change this provision of its labor law in ILO Report No. 343, Case No. 2355 (Colombia) 2007, concerning mass dismissals after the 2004 strike at ECOPETROL.

³² See, ILO CEACR, Individual Observations, Convention 87, Colombia (2006), *supra* n. 6.

³³ Art. 417: “All unions have, without limitation, the ability to join or align themselves in local, regional, national, professional or industrial federations, and these into confederations. The federations and confederations have the right of own legal form and the same attributions of unions, *except for the declaration of a strike*, that is incumbent on, when the law authorizes it, the respective unions or groups of directly or indirectly interested workers.”

³⁴ Digest of Decisions, ¶ 525.

³⁵ See, Art. 450(1)(a): “The collective suspension of work is illegal in any one of the following cases: a) when it is a public service.” Art. 430 of the Labor Code defines public service as: those that work in any branch of the public service, companies that provide transportation by land, sea or air, electricity, telecommunications, all health establishments such as hospitals or clinics, social service establishments, all services related to hygiene and cleanliness of the population, the exploitation, processing and distribution of salt, the exploitation, refining, transport and distribution of oil (when they are used for the fuel supply of the country).

³⁶ Digest of Decisions, ¶ 576.

³⁷ See Art. 450(2): “The suspension of work having been declared illegal, the employer is free to dismiss for this reason those who have taken part in it, and with respect to workers protected by the law, the dismissal will not require judicial qualification.”

4. The authority of the Minister of Labor to refer a dispute to mandatory arbitration when a strike exceeds a certain period.³⁸ The ILO has stated that “a system of compulsory arbitration through the labor authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers’ organizations to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association.”³⁹

5. The ability of the Ministry of Social Protection to determine the legality of a strike.⁴⁰ The ILO has stated that, “Responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved.”⁴¹

II. Enforcement and Application of the Labor Laws

In practice, only a relatively small fraction of the economically active population is able to organize or join a union and bargain collectively. Of the roughly 18 million economically active people in the country, about 8 million receive some kind of salary. Of them, roughly 3.9 million have a formal labor contract (rather than a civil, commercial or other non-labor contract). And of them, about 2.3 million workers have temporary contracts, with only 1.6 million having full-time, indefinite contracts. Thus, in practice, only 1.6 million workers actually can join a union. However, the majority of these are public employees who, though unionized, cannot bargain over working conditions with their employer.⁴² Further, union density has also declined to a low of 4.6% in 2005, and the number of workers covered under new collective bargaining agreements has dropped to a fraction of its previous number, falling from 260,000 to 60,000 in the past 10 years.⁴³

In its report, the government touts the recognition of several new unions within the past five years. However, while new unions may have been formed, reports by the national union centers and by workers attempting to form new unions make clear that numerous obstacles to registration remain. The AFL-CIO has identified several cases in which unions either were refused recognition by the Ministry of Social Protection on spurious grounds or had their initial union registrations revoked at the request of employers that opposed the presence of unionized workers in their workplaces.

For example, workers from around the country formed the National Union of Communications Workers, SINTRAC, on Sept. 1, 2006. The assembly was conducted and complied with all legal requirements necessary to form an industrial union. The

³⁸ See Art 448(4): “When a strike extends beyond sixty (60) calendar days, without the parties finding a solution to the conflict that gave rise to the strike, the Ministry of Social Protection will be able to order that dispute is put to the decision of an Arbitration Tribunal, in which case the workers will have the obligation to resume work within a maximum term of three (3) working days.”

³⁹ Digest of Decisions, ¶ 568.

⁴⁰ See Article 451(1): “The illegality of a suspension of work will be declared by the Ministry of the Labor.”

⁴¹ Digest of Decisions, ¶ 628.

⁴² Interview with Ricardo Bonilla, economist, Center for Development Research, National University.

⁴³ Los Derechos Laborales y las Libertades Sindicales en Colombia, pp. 82, 76 (citing data from the National Administrative Department for Statistics and the Ministry of Social Protection).

paperwork was filed with the Labor Inspectorate in Armenia, Quindío, and was approved and “inscribed” under Resolution No. 343 on Dec. 5, 2006. However, one of the employers objected to the union’s registration, arguing that the founding members were not in fact at the founding assembly and thus could not have signed the necessary documents. The union provided evidence proving the presence of all the founding members at the assembly. Nonetheless, the Ministry of Social Protection decided to revoke the approval. To avoid lengthy litigation, the founders of the union held another assembly (at their expense) and turned in yet another set of forms to another inspectorate in mid-2007. The inspectorate has taken no action, resulting in the *de facto* registration of the union, now called SNTC, after a year’s delay.

The problems are not limited to registration. Trade unions have filed numerous cases with the ILO’s Committee on Freedom of Association, which, upon review, often has criticized the government for its failure to adopt laws consistent with the conventions it has ratified and/or to effectively enforce domestic and international labor laws. The cases below are among the most recent cases, but by no means represent the sum of all cases filed. In each, the ILO found that Colombia violated national and/or international labor law and urged the government to take the steps necessary to remedy the violations.

1. Report No. 348, Case No. 2355 (2007). For the fourth time, the ILO issued recommendations related to the 2004 strike at ECOPETROL, the state oil company. In the most recent review, the ILO once again stated that the strike could not have been declared illegal on substantive and procedural grounds, that the government should respect the May 26 order of the arbitral tribunal regarding the reinstatement of the workers, that the company should desist from firing workers for having participated in the strike and to rehire those who have been fired once again and to refrain from blacklisting workers who participated in the strike. The government has yet to comply with these recommendations.

2. Report No. 346, Case(s) No(s). 2469 (2007): In this case, the union alleged the government: (1) refused to grant the right of collective bargaining to the workers of the former Social Security Institute (ISS), which was split into seven state social companies; (2) did not recognize the collective agreement in force; (3) limited trade union leave to 20 hours per month by executive decree; (4) initiated disciplinary proceedings against three trade union officials for using that leave; and (5) failed to conduct collective bargaining with the trade unions regarding the adoption regulatory decrees that violate the collective agreement.

Upon review of the facts, the ILO urged the government to: (1) take the necessary measures to ensure that, in consultation with the trade unions concerned, the national legislation is amended so public employees in question can enjoy the right to collective bargaining; (2) assure respect for acquired rights as established in the collective agreement in force at the ISS and applied at the State Social Company; (3) review Circular No. 0005 of 2005 regarding hours of leave for trade union activity, after consultations with the trade union organizations concerned, to obtain a solution satisfactory to the parties; (4) ensure the disciplinary measures are withdrawn against the

union officials for using leave and that adequate compensation is paid to them for any damage caused; and (5) take the necessary measures to ensure the collective agreement is duly applied.

3. Report No. 344, Case(s) No(s). 2434 (2007): The ILO here found that: (1) the provision of the pension reform law that nullifies existing pension provisions of collective agreements violates the right to bargain collectively; (2) the government should hold consultations with the unions on retirement and pension issues to reach a negotiated solution; and (3) the government should immediately begin to bargain with the public-sector union SINTRAPROAN.

4. Report No. 344, Case(s) No(s). 2481 (2007): Here, soccer players filed a complaint alleging that the Colombian Football Federation and the Colombian Football Major League refused to bargain collectively with the players' association and have threatened not to employ players who are association members or who exercise their trade union rights. The ILO found that: (1) the soccer team owners' association improperly refused to bargain collectively with the players' association; (2) negotiations should resume; and (3) an investigation should be undertaken to determine whether there was pressure, threats of dismissal and other acts of discrimination directed at workers because of their decision to strike, and if so, to punish those responsible.

5. Report No. 340, Case No. 2424 (2006): In 2000–2001, the government undertook several collective dismissals of workers (all of whom belonged to the union) during the restructuring and eventual liquidation of Banco Cafetero S.A. The restructuring process was implemented without consultations with the trade unions, in contravention of the collective agreement in force, which provided for tenure for workers with 10 or more years of service. After the liquidation of the company, the dismissed workers then were hired under contract by the new bank GRANBANCO S.A., but that under the terms of their contracts of employment they cannot form or join a union.

The ILO reviewed the complaint and urged the government to: (1) ensure the collective agreement continues to be applied to workers of BANCAFE while it undergoes liquidation, in accordance with the principle that the closing of an enterprise should not in itself result in the extinction of the obligations resulting from the collective agreement; (2) investigate whether the dismissals that occurred during the process of liquidation were motivated by anti-union considerations; and (3) take the necessary steps to guarantee that workers dismissed from BANCAFE who now are working for GRANBANCO enjoy the right to form a union and bargain collectively.

SOCIAL DIALOGUE

Lack of Respect for ILO

The government of Colombia asserts that it has committed itself to upholding worker rights as defined by the ILO. However, the ILO's Committee of Experts has found that several provisions of the labor code conflict with core labor standards. Further, the ILO's Committee on Freedom of Association has found numerous times that Colombia violates its own laws and/or international standards. In some cases, the government has ignored multiple resolutions on the same case. The failure to respect the ILO's recommendations, which are the product of a tripartite process including workers, government and employers, does not reflect well on Colombia's commitment to engaging in and respecting the outcomes of social dialogue.

The Tripartite Agreement⁴⁴

The international labor community hailed the establishment of the ILO Office in Colombia as an important step toward greater respect for labor rights in the country. However, we have serious concerns about the lack of political support for the office, which impedes the functioning of the office and the dedicated but small staff working there. The technical cooperation identified in the Tripartite Accord, by which the ILO office was established, has been interpreted by the government to include only workshops and seminars. It allows for no verification or involvement of the office in protection of labor rights, even though the scope of the accord explicitly lists the promotion and defense of fundamental labor rights as integral to the mission. Further, the office consists of only one representative and one secretary. No technical or legal support is provided.

Although an agreement establishing the ILO Office in Colombia was signed in mid-2006, only one of the four technical cooperation projects to be undertaken by the ILO Office, on social dialogue and fundamental rights, has been fully funded and commenced on Nov. 28, 2007.⁴⁵ The long-delayed funding is only sufficient for the payment of one experienced project coordinator.

Finally, the mandate of the ILO Office expires in October 2008. It is essential that the mandate of the office be extended if it is to have any long-term impact in the country.

Dialogue Mechanisms

Colombian authorities assert that the government has opened and maintained several

⁴⁴ The Tripartite Agreement and Mandate are available online at: www.ilo.org/public/english/standards/relm/gb/docs/gb297/pdf/tc-5-2.pdf.

⁴⁵ The four projects are: 1) Strengthening Social Dialogue and Fundamental Rights—Freedom of Association and Collective Bargaining in Colombia; 2) Generation of Employment for Vulnerable Populations in Colombia: Youth, Displaced and Demobilized; 3) Generation of Employment for Poor Women through Entrepreneurial Strengthening With a Focus on Gender and Local Development; and 4) Program for Building Capacity for Local Economic Development—PRODEL.

dialogue mechanisms with the unions since 2003. Among them are the Commission for Dealing with Conflicts, National Commission on Wage and Labor Policy and the Inter-Institutional Commission for Human Rights. While these mechanisms do exist, it is untrue that they have been functioning since 2003. Indeed, some of these commissions seem to have been reactivated only recently and with limited scope and few demonstrable results in terms of increased labor rights protections or compliance.

The Commission for Dealing with Conflicts: The Ministry of Social Protection has acknowledged that, while this commission was formed years ago, it only began to function in mid-2007. Unions are concerned that the government's commitment to the commission, which sprang to life only in response to external criticism, may be short-lived.

The purpose of the commission is to resolve cases that already have been presented to the ILO in Geneva, or new claims that could be brought to the ILO. The ILO Office in Colombia already has referred several new cases to this commission. However, for a case to be taken up by the commission, all parties involved must agree to it—which is often difficult to achieve when parties are in dispute. The fact that the case remains unresolved despite clear ILO recommendations is not considered sufficient justification for the commission to hear the case. Moreover, the commission is not set up to act upon the ILO recommendations, but rather to broker a settlement between the parties, which may result in outcomes that afford workers less than they are entitled to if international labor law were to be applied.

Commission on Wage and Labor Policy: The Ministry of Social Protection also acknowledged that while the commission was formed years ago, it only began to function in 2007. Unions state that the commission has been functioning in the past few months. The commission is beginning to work on drafting new legislation to permit collective bargaining in the public sector. Unions are cautiously optimistic, but note that there are many challenges.

Inter-Institutional Commission on Human Rights: This commission is established to follow the prosecution of crimes against trade unionists and to review the protection program. The commission was created by Decree 1413 in 1997. However, it was largely dormant until January 2003. A round of meetings was conducted over the year, but with no substantial changes resulting from the process it again fell dormant with only sporadic activity. The commission was again revived in mid-2007, with the government scheduling a series of meetings with local unions around the country. The government also has invited federal prosecutors to look at past crimes that were reported by family members but are not in the archives of the Office of the Attorney General. The unions are participating in the meetings but are reserving judgment about the efficacy of the commission given the continued violence and impunity.

Government Stigmatization of Unionists

One factor that contributes to ongoing violence against trade unionists is stigmatization of trade unionists as linked to guerrillas. Government officials have contributed to this stigmatization. President Uribe stated in May that one of the trade unionists was killed this year because he was a “terrorist.”⁴⁶ In 2004, Vice President Francisco Santos, upon receiving news of the murder of three trade union leaders in Arauca, stated publicly that the unionists were ELN guerrillas killed in combat. A subsequent investigation found that soldiers from the Revéz Pizarro Mechanized Group of the 18th Brigade of the Colombian Army executed the unionists, who had no link with any illegal armed group. Years of similar accusations by government officials leveled against unionists, human rights defenders and journalists not only damage the relationship between the state and civil society, but also put people at risk of persecution.

⁴⁶ “We will not accept Colombia being given the pariah treatment in the United States’ says Uribe,” *El Tiempo*, May 19, 2007.

Annex 1



LAS AGUILAS NEGRAS UNIDAS DE COLOMBIA

VECINO USTED QUE NO TIENE CONCIENCIA MALPARIDO TRIPLEHIJUEPUTA GUERRILLERO TE DIJIMOS QUE SALIERAS DE AQUI DE BARRANCA Y NO LO HICISTES, VOLANDO EN HELICOPTERTO TE SALVASTES COMO UN COBARDE TU CRES EN TI QUE TE VAS A SALVAR MALPARIDO HACIENDO DENUNCIAS PENDEJAS REPETIDAS VECES, CREES QUE TE VAS A SALVAR DE LO QUE TENEMOS PLANEADO PARA TI QUE YA ES UN HECHO MARICON, SIGUE JUGANDO SIGUE JUGANDO PARA QUE VEAS POR DONDE TE VAN A SALIR LAS COSAS GUERRILLERO, NO SEAS ILUSO MALPARIDO HIJUEPUTA, NO TE QUEREMOS NI EN BARRANCA, NI EN CARTAGENA NI EN OTRO LUGAR DEL TERRITORIO NACIONAL HAS LA PRUEBA Y TE VAMOS A TIRAR AL PISO, YA TENEMOS UBICADOS Y MARCADO A TU FAMILIA Y A TI EN BOGOTA.

TE ACUERDAS MALPARIDO QUE AQUI EN BARRANCA TE SALVASTES EN LA CRA. 22 HACE UNOS 25 DIAS APROXIMADAMENTE TU SABES QUE RECORRIDO HICIESTES Y CONQUIEN TE ENCONTRASTES ESE DIA, EN TUS REUNIONES CLANDESTINAS TENEMOS FOTOS, VIDEOS, GRABACIONES Y TUS IDAS AL VECINO PAIS TU SABES ESTO DE QUE SE TRATA, ESTAS ATRAPADO Y CONFIADO VUELVES A INCUMPLIR NUESTRA ORDEN YA SABES QUE ESTAS AVISADO QUE ERES OBJETIVO MILITAR DESPUES VIENEN LAMENTOS TE ADVERTIMOS CON TIEMPO MALPARIDO TODO PASA Y SE OLVIDA COMO TU CAMARADA AURI SARA MARRUGO, TODOS TUS GUERRILLEROS MUERTOS, TU VERAS TRIPLEHIJUEPUTA TE VAS A IR AL HUECO Y ADVIERTELES A TUS CAMARADAS QUE NO FASTIDIEN CON SUS RIDICULAS INTERVENCIONES Y TODAS ESAS ORGANIZACIONES SIN BASE, TODO ESO SE VA ACABAR, YA TU ORDEN ESTA LISTA NOSOTROS TENEMOS EL PODER Y LOGRAREMOS NUESTRO OBJETIVO TRIUNFAREMOS.

BARRANCA SEPTIEMBRE 19 DE 2007

**COMANDANTE ZONA
LAS AGUILAS NEGRAS UNIDAS DE COLOMBIA**

Translation:

Neighbor, you who are not aware son of a b---- guerrilla we told you to leave here from Barranca[bermeja] and you did not do it, flying in a helicopter you were saved like a coward you believe that you are going to save yourself son of a b---- by making repeated dumb-ass denunciations, you think that you are going to save yourself from what we have planed for you, which is already a fact son of a b----, keep playing, keep playing so that you see where things are going to be left with you guerrilla, you are not a fool you son of a b----, we do not want you in Barranca, nor in Cartagena, nor in any other place in the nation, *have* the proof and we are going to you to shoot you to the ground, we have already located and marked you and your family in Bogota.

You remember son of a b---- that here in Barranca you were saved on 22nd Ave about 25 days ago you know what route you took and with whom you met that day, in your clandestine meetings, we have photos, video, recordings and your trip to the neighboring country you know what this is about, you are caught and trusted that you will not follow our order, you know that you are advised that you are a military target, after come the laments, we warn you that with time, you son of a b----, everything passes and is forgotten, like your comrade Aury Sara Marrugo, all your dead guerrillas, your will see son of a b---- that you are going to the grave and warn your comrades that they don't annoy us with their ridiculous speeches and all those organizations without a base, all that is going to end, your order is ready we have the power and now we will obtain our objective, we will prevail.

September 19, 2007
Zone Commander
United Black Eagles of Colombia